IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2918 OF 1997

Ashokkumar Dinkar Khopade.... Petitioner

versus

Anantrao V.Phadnis Madhyamik
Vidyalaya. Ghonsari and ors..... Respondent.

Shri R.G.Ketkar for the petitioner
Shri P.G.Lad for Respondent no.2.
Shri S.K.Chincholikar AGP for Respondent no.3.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH JUNE, 2007

P.C.;

1. The petitioner had questioned the legality and validity of the order of termination issued by the respondent by filing an appeal before the presiding Officer, School Tribunal. The School Tribunal has dismissed the appeal filed by the petitioner and aggrieved thereby the present writ petition has been filed.

2. The petitioner was initially appointed as an Assistant Teacher by an order of appointment fora period commencing from 13-6-1988 to 2-5-1989. The said order categorically mentions that the appointment of the petitioner is purely temporary for the above referred period. The next appointment order reveals

that the petitioner yet again was appointed in academic session 1990-91 and the second appointment order also mentions that the appointment to be temporary for a period commencing from 11-6-1990 to 2-5-1991 and the last order goes to appoint the petitioner for the academic session 1991-92 purely on temporary basis. The petitioner has been discontinued from service from the end of academic session 1991-92. It is the contention raised on behalf of the petitioner that as the petitioner has completed more than two years of service, the petitioner is entitled to be granted the status of a confirmed employee having regard to the provision of section 5(2) of the Act.

3. Per contra the learned counsel for the respondent has submitted that section 5 sub section (2) only operate if the initial appointment is on probation for a period of two years. He has pointed out that on each occasion, the petitioner was put on notice that the appointment is temporary appointment only for one academic session and hence according to the respondent, the petitioner cannot be granted the status of deemed conformed employee. The learned counsel for the respondent has also relied upon one circumstances to demonstrate that the petitioner himself was aware about his appointment being

temporary and hence after the end of academic session 1991-92 when he came to be terminated from service, he had again applied for the same post when it was advertised in academic session 1992-93. The petitioner had applied for the post of Asstt. teacher which was advertised at serial no.4 in the advertisement, which is at Exh.F. It is submitted that the petitioner has taken calculated chance by participating in the process of selection commenced in pursuance of the advertisement and only after his rejection in the process, the petitioner has filed the appeal before the tribunal.

4. School tribunal after appreciating the rival contentions had recorded a finding on fact that the appointment of the petitioner was temporary in nature and thus the petitioner does not assume confirmation which could brand the termination as illegal. The tribunal has taken a possible view of the matter based on the language used in the appointment order that the appointment of the petitioner is temporary in nature.

5. Perused the impugned judgment and order passed by the tribunal which goes to take a possible view of the matter. Hence no interference in writ jurisdiction is possible. Petition is thus dismissed. Rule is discharged.

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